



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/548,719	04/13/2000	David R. Barstow		7194

26646 7590 04/11/2002

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

PAULA, CESAR B

ART UNIT	PAPER NUMBER
----------	--------------

2176

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/548,719

Applicant(s)

BARSTOW ET AL.

Examiner

CESAR B PAULA

Art Unit

2176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. This action is responsive to the IDSs, and preliminary amendment filed on 4/13/00, 7/12/00, and 5/18/01.

This action is made Non-final.

2. Claims 1-16 are pending in the case. Claims 1, 5, 9 and 13 are independent claims.

The Examiner understands that this invention is directed towards the transmission of a live event computer simulation. This live event is subdivided into events which are represented by activities involving physical exertion, and skill.

Priority

3. Acknowledgment is made of applicant's claim for domestic priority under 35 U.S.C. 120, and based on U.S applications # 08/871,713 filed on 6/9/1997, 08/660,891 filed on 6/10/1996, 07/920,355 filed on 7/29/1992, 07/542,990 filed on 6/25/1990, and 07/641,716 filed on 1/15/1991, which papers have been placed of record in the file.

Information Disclosure Statement

4. The information disclosure statements filed 4/13/00, 7/12/00 fail to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 3 recites the limitation "said start and **end time**" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim. The claim refers to "**a start time and a stop time**" (L.3) not a "said start and **end time**".

7. Claim 11 recites the limitation "said start and **end time**" in line 7. There is insufficient antecedent basis for this limitation in the claim. The claim refers to "**a start time and a stop time**" (L.3) not a "said start and **end time**".

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Art Unit: 2176

9. Claims 1, 4-5, 8-9, 12-13, and 16 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 5, 2, 13, 2, 10, 2, 10, and 2 respectively of prior U.S. Patent No. 6,204,862 B1. This is a double patenting rejection.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action::

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al, hereinafter McCarthy (Pat. # 4,894,774, 1/16/90), in view of Hughes et al, hereinafter Hughes (Pat. # 4,918,603, 4/17/90).

Regarding independent claim 1, McCarthy discloses a method for transmitting a game simulation; the simulation made up of sub-events—moving, colliding of objects, etc-- being governed by a set of rules—governing the motion of objects, collision detection, etc. The rules determine a status change—graphically moving, colliding of objects(col.1, lines 58-col.2, line 67, col.3, lines 56-col.4, line 67). McCarthy fails to explicitly disclose *simulation of a live event*. Hughes teaches the simulation of sports, such as a football game, on a computer (col.2, lines 1-67, and col.16,lines 3-9). However, it would have been obvious to a person of ordinary skill in the art at the time of the invention to have combined the teachings of McCarthy, and Hughes,

Art Unit: 2176

because Hughes teaches above the simulation of an easy to use football game based on actual performances.

Moreover, McCarthy discloses representing one of the sub-events—moving, colliding of objects, etc—with action involving physical skill, and exertion—moving, colliding of objects(col.1, lines 58-col.2, line 67, col.3, lines 56-col.4, line 67).

Moreover, McCarthy discloses the creation, and updating of a database file for storing information concerning the game—moving, colliding of objects, etc— (col.2, lines 58-col.3, line 10).

Furthermore, McCarthy discloses the updating of array databases in response to moving of objects on a computer screen as per a user request or transmission (col.2, lines 58-col.3, line 10).

Regarding claim 2, which depends on claim 1, McCarthy discloses that the moving, and collision of objects is internally represented by a time slot—beginning and end time—and updating the database based upon the time slot (col.2, lines 58-col.3, line 67).

Claim 3 is directed towards a method for implementing the method found in claim 2, and therefore is similarly rejected.

Regarding claim 4, which depends on claim 1, McCarthy discloses that the moving, and collision of objects is represented by x, y coordinates (col.4, lines 6-67).

Furthermore, McCarthy discloses the creation, and updating of a database file for storing x, y coordinates regarding the moving and collision of objects (col.2, lines 58-col.3, line 10, and col. 8, lines 17-67).

Art Unit: 2176

Regarding independent claim 5, the limitations *of a method for transmitting information useful in a computer simulation of a live event....updating the database file* are directed towards the step of claim 1 and therefore are similarly rejected.

Furthermore, McCarthy discloses a method for transmitting a game simulation; the simulation made up of sub-events (col.1, lines 58-col.2, line 67, col.3, lines 56-col.4, line 67). McCarthy fails to explicitly disclose *receiving a request for information...from a viewer computer and transmitting information to the viewer computer*. Hughes teaches the request for the display of menus on a computer, including information about a football game, in response to a user's request (col.2, lines 1-67, col.4, line 41-col.6, line 67). However, it would have been obvious to a person of ordinary skill in the art at the time of the invention to have combined the teachings of McCarthy, and Hughes, because Hughes teaches above the simulation of an easy to use football game based on actual performances.

Claims 6-16 are directed towards a method for implementing the method found in claims 2, 2, 4, 1-2, 2, 4, 1-2, 2 and 4 respectively, and therefore are similarly rejected.

Conclusion

I. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gasper et al. (Pat. # 5,111,409), Pocock et al. (Pat. # 4,905,094), Rutherford et al. (Pat. # 4,893,256), Breslow et al. (Pat. # 4,530,499), Chippendale Jr. (Pat. # 4,660,107), Isle et al. (Pat. # 4,931,950), Kaslow (Pat. # 4,141,560), Beitel et al. (Pat. # 5,119,474), and Best (Pat. # 4,445,187).

II. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cesar B. Paula whose telephone number is (703) 306-5543. The

Art Unit: 2176

examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:00 p.m. (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon, can be reached on (703) 308-5186. However, in such a case, please allow at least one business day.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Any response to this Action should be mailed to:

Director United States Patent and Trademark Office

Washington, D.C. 20231

Or faxed to:

- (703) 746-7238, (for **After Final** communications intended for entry)
- (703) 746-7239, (for **Formal** communications intended for entry)

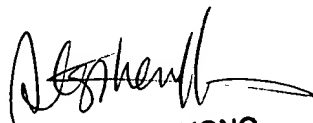
Or:

- (703) 746-7240, (for **Informal or Draft** communications for discussion only, please label "PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

CBP

4/4/02


STEPHEN S. HONG
PRIMARY EXAMINER